IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

01 JUN 13 PM 1:37

CLERK-ALBUQUERQUE

CLIFFORD LUCERO and his wife,
KAREN LUCERO,

Plaintiffs,

vs

No. CIV-01 0665
RICHARD L. PUGLISI
WILLIAM W. DEATON

DINISH KHOLWAD; ECONO LODGE MIDTOWN; CHOICE HOTELS INTERNATIONAL, INC., a NYSE corporation,

Defendants.

NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

To: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

COME NOW the Defendants, Dinish (sic hereinafter "Denish") Kholwad and Econo Lodge Midtown, by and through their counsel of record, J. Edward Hollington of J. Edward Hollington & Associates, P.A., and pursuant to 28 U.S.C. §1441, 28 U.S.C. §1446, Fed. R. Civ. P. 81(c) and D.N.M.LR-Civ. 81.1, move this Court to allow removal of the above-entitled action to the United States District Court for the District of New Mexico. As grounds therefore, Defendant would show:

1. On or about May 15, 2001, a Complaint for Damages, Violations of State and Federal Minimum Wage Acts, Breach of Contract, Negligence, Intentional Tort and Constructive Fraud (hereinafter "Complaint") was filed in the Second Judicial District Court, County of Bernalillo, State of New Mexico. The case was docketed as Bernalillo County Cause No. CV 200103371.

2. The Complaint names Denish Kholwad and Econo Lodge Midtown, as Defendants. All the defendants consent to this Notice of Removal.

3. Denish Kholwad and Econo Lodge Midtown were served through Denish Kholwad, with a copy of the Complaint, Summons, Certificate of Arbitration, Interrogatories and Requests for Production on or about May 15, 2001.

4. The Complaint asserts claims under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 (2000) et. Seq., and New Mexico State Law. Specifically, this Complaint asserts a claim pursuant to Section 16(b) of the FSLA, 29 U.S.C. § 216(b), because it asks for an award of unpaid overtime compensation, liquidated damages, attorneys fees, costs, prejudgment interest, and post judgment interest pursuant to 29 U.S.C. § 207 (2000).

5. The Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331 (2000), and 28 U.S.C. § 1337 (2000). *Barrett v. McDonald's of Oklahoma City, et al.*, 419 F.Supp. 792 (D. W.D. Okla. 1976); *Goettel v. Glenn Berry Farms*, 236 F.Supp. 884 (D. N.D. Okla. 1964)(citing *State of Missouri ex. Rel. St. Louis, Brownsville & Mexico Ry. Co. v. Taylor*, 266 U.S. 200, 45 S.Ct. 47, 69 L.Ed. 247 (1924)). This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 (2000). This civil action is removable by the Defendants under the provisions of 28 U.S.C. § 1441(a)(b) and (c) (2000) without regard to diversity of citizenship or the amount in controversy. *Goettel*, 236 F.Supp. 884 (1964). Venue is proper pursuant to 28 U.S.C. § 1391.

6. In accordance with D.N.M.LR-Civ 81.1(a), attached hereto are copies of all pleadings served upon the Defendants in Second Judicial District Court No.CV-200103371.

7. This Notice of removal was filed with this Court within thirty (30) days after service of the Complaint, which is the first pleading naming these Defendants.

8. Defendants Denish Kholwad and Econo Lodge Midtown, upon filing of this Notice of Removal, gave written notice of the filing to Plaintiff as required by 28 U.S.C. § 1446(d), and filed a Notice of removal with the clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico, the Court from which this action is removed.

9. This Notice of removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, the Defendants Denish Kholwad and Econo Lodge Midtown, pray that the above-entitled action be removed from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to this court.

Respectfully submitted

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By______________________________
J. Edward Hollington
Attorney for Defendants Denish Kholwad and
Econo Lodge Midtown
708 Marquette Avenue N.W.
Albuquerque, New Mexico 87102-2035
(505) 843-9171

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was mailed/faxed this 13th day of June, 2001, to:

Chris Lucero, Jr., Esquire
Post Office Box 7429
Albuquerque, NM 87194

____
J. Edward Hollington

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. CV-

CLIFFORD LUCERO and his wife,
KAREN LUCERO,

CV- 2001 0 3 3 7 1

Plaintiffs,

v.

DINISH KHOLWAD; ECONO LODGE MIDTOWN;
ECONO LODGES INTERNATIONAL, INC.,

Defendants.

SUMMONS

To: Denish Kholwad
2412 Carlisle Blvd. NE
Albuquerque, NM

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the complaint.

Attorney or Attorneys For Plaintiff. Address: Chris Lucero Jr.
P.O. Box 7429
Albuquerque, NM 87194
(505) 843-6687

WITNESS the Honorable TED BACA, District Judge of said Court of the State of New Mexico and the Seal of the District Court of said County, this ~~5 day of July 2001.~~ MAY 1-5 2001

BENNINA ARMIJO-SISNEROS CLERK OF THE DISTRICT COURT

BY: [signature]
Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time.

It does require you or your attorney to file a legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Judgment By Default against you.

ENDORSED
FILED IN MY OFFICE THIS

MAY 15 2001

CLERK DISTRICT COURT

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

No. CV- CV-2001 03371

CLIFFORD LUCERO and his wife,
KAREN LUCERO,

Plaintiffs,

v.

DINISH KHOLWAD; ECONO LODGE MIDTOWN; CHOICE HOTELS INTERNATIONAL, INC., a NYSE corporation,

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiffs CLIFFORD LUCERO and his wife, KAREN LUCERO, by and through their attorney Chris Lucero, Jr., for their Complaint state as follows.

GENERAL ALLEGATIONS

1. Plaintiffs CLIFFORD LUCERO and his wife, KAREN LUCERO are residents of Bernalillo County state of New Mexico.

2. Defendant DINISH KHOLWAD d/b/a ECONO LODGE MIDTOWN, is a resident of Bernalillo County, New Mexico, with his motel operating under unknown legal organization, transacting business within the County of Bernalillo, State of New Mexico.

3. Defendant CHOICE HOTELS INTERNATIONAL, INC. is a NYSE corporation, with its western principal place of business in Phoenix, Arizona, providing national services for ECONO LODGE MIDTOWN, including but not limited to, advertising, reservation systems, and other central and national services of an unknown character involving franchise rights.

4. Plaintiffs were hired by Defendants DINISH KHOLWAD and ECONO LODGE MIDTOWN as employees to perform the duties of desk clerk and general maintenance in November 2001. They were given a motel room to live in, $1000 cash per month, and had to man the front desk 19 hours per day with no days off per month. Some time later their rate of pay was increased to $1200 per month.

5. They were hired as desk clerks, and were never designated as managers. Their responsibilities included to maintaining the front desk, renting rooms, dealing with the public, answering the motel's phone system, providing general security, and providing general maintenance for the hotel in case of problems with plumbing, lighting and such. Maid service for the rooms was provided by others.

6. Defendants DINISH KHOLWAD and ECONO LODGE MIDTOWN required Plaintiffs to perform their duties 19 hours per day, with no days off per month.

7. Plaintiffs quit working for the Defendants in April, 2000.

8. During their absence, Defendants DINISH KHOLWAD and ECONO LODGE MIDTOWN placed advertisements in the Albuquerque Journal Help Wanted sections seeking others to fill the job of "Desk Clerk."

9. Upon information and belief, Defendants gave the same compensation to those who took their place.

10. Plaintiffs were contacted by DINISH KHOLWAD in June 2000 to come back to work, and Plaintiffs agreed with their monthly cash compensation increased to $1400 per month, a motel room, and two days off per month. They were still required to man the front desk, provide telephone service for the motel's 38 rooms, and perform all the rest of their duties for 19 hours per day. They again quit in February 2001 because Dinish Kholwad demanded Clifford Lucero to completely

service all the motels air conditioners by himself, but they were again rehired on March 2001.

11. On April 27, 2001, DINISH KHOLWAD confronted Plaintiff Karen Lucero about charging too little for some of the rooms, and berated her in front of some of his friends, and then physically confronted her and Clifford Lucero.

12. Plaintiffs quit on April 27, 2001. DINISH KHOLWAD repeated contacted them by phone over the next several days trying to get them to return to the motel because he was going to Las Vegas, Nevada.

13. During all times during their employment, Plaintiffs were never given W-2 forms or IRS Form 1099's.

FIRST CAUSE OF ACTION

VIOLATIONS OF STATE AND FEDERAL MINIMUM WAGE ACTS

14. All the previous allegations in all paragraphs are realleged here as though fully set forth.

15. Plaintiffs were hired together, with Karen Lucero required to work 19 hours per day, unless relieved by Clifford Lucero.

16. Clifford Lucero worked during the day at other employment and could not return to relieve Karen until after dinner, when he would give her a spell for a few hours. During this time she was the office clerk, waiting on persons renting rooms, handling the phone for the complex, and servicing the facility's needs. Clifford Lucero was also required to act as a maintenance man on a 24 hour per day 7 day per week basis.

17. That the Plaintiffs under the law they must be considered two employees.

18. They had two days off per month.

19. Under the minimum wage act for the State of New Mexico, Section 50-4-1, et seq. NMSA (1978), the value of the motel room is not to be considered wages, since the value of utilities,

supplies and housing only allows such deductions for persons employed in agriculture.

20. Plaintiffs are covered by the Minimum Wage Act of the State of New Mexico which pursuant to §50-4-22, NMSA 1978 requires the minimum wage rate of $4.25 an hour. Defendants have violated this act because their amount of wages paid and hours worked do not amount to $4.25 per hour.

21. Also, under the Minimum Wage Act of New Mexico no employee covered by this act shall be required to work more than forty hours in any week of seven days, unless he is paid one and one-half times his regular hourly rate of pay for all hours worked in excess of forty hours. Defendants violated this provision of the act.

22. Section 50-4-26, NMSA 1978 provides criminal penalties for violating the Minimum Wage Law :

"A. Penalties:

(1) any employer who violates any of the foregoing provisions shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars ($25) or more than three hundred dollars ($300) or by imprisonment for not less than ten nor more than ninety days or by both such fine and imprisonment;

23. Upon information and belief, Defendants have violated §50-4-26, NMSA 1978.

24. The Federal Minimum Wage Rate also applies since Defendants' business deals with interstate commerce, and that rate is $5.15 per hour.

25. Section 50-4-26(B), NMSA 1978 allows my office to pursue the following employee remedies in the District Court for the State of New Mexico:

"(1) any employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid minimum wages, as the case may be, and in an additional equal amount as liquidated damages;

(2) action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of himself or themselves and other employees similarly situated ....

The court in any action brought under Paragraph (2) shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorneys' fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings."

26. That Defendant Econo Lodge International, Inc. was under a duty to ensure that its franchisees do not violate State and Federal Minimum Wage laws, which duties it owes to the general public of the State of New Mexico, and to Plaintiffs in particular.

27. That Defendant Econo Lodge International, Inc. violated its duties to Plaintiffs, causing them damages as allowed by the federal and state Minimum Wage Acts..

WHEREFORE, Plaintiffs pray the Court to award them double what they should have been paid have the State and Federal Minimum Wage Acts been complied with, and for attorney's fees, costs, and such further relief the Court deems appropriate.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

28. All the previous allegations in all paragraphs are realleged here as though fully set forth.

29. Defendants violated Section 50-4-2, NMSA 1978 which requires that payment of wages be by check, and "every employer shall provide his employee with a written receipt that identifies the employer and sets forth the employee's gross pay, the number of hours worked by the employee, the

total wages and benefits earned by the employee and an itemized listing of all deductions withheld from the employee's gross pay."

30. Upon information and belief, Defendants violated Section 50-4-9, NMSA 1978 requires "A. Every employer shall keep a true and accurate record of hours worked and wages paid to each employee...," with such records subject to inspection of the State Labor Commission "at all reasonable times."

31. Upon information and belief, Defendants violated Section 50-4-10 NMSA 1978, which states:

> "Any employer who shall violate any provision of this act [50-4-1 to 50-4-12 NMSA 1978] or fail to comply with any provision of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars [($25.00)] nor more than fifty dollars [($50.00)] **for each separate offense**, or by imprisonment of not less than ten days nor more than ninety days, or by both such fine and imprisonment. In case the employer is a corporation the fine hereinbefore provided shall be assessed against said corporation as a penalty." (Emphasis added).

32. Defendants violated Section 50-4-13 NMSA 1978 which states that "Any person or persons, firm, association or corporation, owning any hotel, ... within this state, shall not be allowed to cause any male employee therein to labor more than ten hours in any twenty-four hours of any one day, nor more than seventy hours in any.one week of seven days." Subsection 16 requires record to be keep about numbers of hours, and subsection 17 provides that a person who fails to keep such records "shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than seventy-five dollars [($75.00)], or more than three hundred dollars [($300)] for each offense."

33. Defendants violated Section 50-5-1, NMSA 1978 which deals with maximum hours of labor for women and states:

"No female shall be employed in any ... hotel ... or in any office as a stenographer, clerk, bookkeeper or in any other clerical position ... in any telephone ... office, within the state more than eight hours in any one day of twenty-four hours, nor more than forty-eight hours in any one week of seven days;"

34 Defendants violated §50-5-7 NMSA 1978 which does allow in excess of forty-eight hours in any one week of seven days, but the employee shall be paid for on the basis of time and one-half for such excess.

35 Upon information and belief, Defendants violated Section 50-5-8 requires time records and inspection at all reasonable hours by the state labor commissioner, and §50-5-9 provides that "the failure of any employer to keep such a record, or makes any false entry therein, or fails to comply with the provisions of this act [50-5-1 to 50-5-9 NMSA 1978], shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than seventy-five dollars [($75.00)], or more than three hundred dollars [($300)] for each offense."

36. That these statuttory provisions must be complied with by all employers in the State of New Mexico, and crete duties for employers towards employees.

37. That Defendants have breached these duties to Plaintiffs.

38. That the Plaintiffs have suffered compensatory damages, including but not limited to, pain and suffering, mental and emotional distress, loss of quality of life, and all other compensatory damages as allowed by law.

39. That Defendant Econo Lodge International, Inc. was under a duty to ensure that its franchisees do not violate State and Federal law, which duties it owes to the general public of the State of New Mexico, and to Plaintiffs in particular.

40. That Defendant Econo Lodge International, Inc. violated its duties to Plaintiffs, causing them compensatory damages.

WHEREFORE, Plaintiffs pray the Court to award them $100,000 each as compensatory damages against the Defendants, and for attorney's fees, costs, and such further relief the Court deems appropriate.

THIRD CAUSE OF ACTION

NEGLIGENCE

41. All the previous allegations in all paragraphs are realleged here as though fully set forth

42. That in addition to the violates of state and federal law above mentioned, Defendants did not give Defendants W-2 or 1099 forms, did not withhold taxes or social security contributions, did not pay for unemployment compensation, and did not provide proof of paying worker's compensation insurance. These violations of law are also violations of duties that Defendants owe to Plaintiffs.

43. That all the violations of law by Defendants were also breaches of duties owed to Plaintiffs.

44. That these breaches of duties by Defendants to Plaintiffs were negligent.

45. That Defendants' negligence caused Plaintiffs compensatory damages as allowed by law.

WHEREFORE, Plaintiffs pray the Court to award them $100,000 each as compensatory damages against the Defendants, and for attorney's fees, costs, and such further relief the Court deems appropriate.

FOURTH CAUSE OF ACTION

INTENTIONAL TORT

46. All the previous allegations in all paragraphs are realleged here as though fully set forth.

47. That the violations of law above described, and the violations of Plaintiffs rights, were intentional by DINISH KHOLWAD and ECONO LODGE MIDTOWN.

48. That the wilfull disregard of law by DINISH KHOLWAD d/b/a ECONO LODGE MIDTOWN was done with malice and wilful disregard of the health and safety of Plaintiffs and the general public of the State of New Mexico.

49. That these intentional acts and omissions by DINISH KHOLWAD d/b/a ECONO LODGE MIDTOWN caused Plaintiffs compensatory damages.

50. That these intentional acts and omissions by DINISH KHOLWAD d/b/a ECONO LODGE MIDTOWN entitle Plaintiffs to punitive damages in the amount of $500,000.

WHEREFORE, Plaintiffs pray the Court to award them $100,000 each as compensatory damages against the Defendants, for $500,000 in punitive damages, and for attorney's fees, costs, and such further relief the Court deems appropriate.

FIFTH CAUSE OF ACTION

CONSTRUCTIVE FRAUD

51. All the previous allegations in all paragraphs are realleged here as though fully set forth.

52. The Defendants, whether acting individually, as agents, servants or employees of each other, all had a duty to disclose various facts to the Plaintiffs.

53. That these Defendants have failed in their duties to disclose by omission and commission in their communications to the Plaintiffs, which fraudulently induced the Plaintiffs to enter into employment agreements with the Defendants, which violated their various rights under the law above enumerated.

54. That all of the amounts of money that Plaintiffs would have received had they been properly compensated, and all the time which they lost in their lives, have been wrongfully and fraudulently appropriated for the sole use of the Defendants to the Plaintiffs' damages.

55. By Defendants' communication, silence and failure to give Plaintiffs notice and the

information required of them to disclose to the Plaintiffs as employers, the Defendants have acted contrary to sound morals at the very least and their breach of duties to disclose said important information, and general breach of legal duties, make them each equally liable to the Plaintiffs for any damages suffered.

56. That Defendants have committed constructive fraud against the Plaintiffs in their failure to disclose to the Plaintiffs the information here and before described.

57. That as a direct and approximate result of Defendants' constructive fraud , and Plaintiffs have been damaged in an amount to be proved by the evidence.

58. That the Defendants' willful malicious intentional and fraudulent conduct justifies an award of punitive damages to the Plaintiffs.

WHEREFORE, Plaintiffs pray the Court to award them $100,000 each as compensatory damages against the Defendants, for $500,000 in punitive damages, and for attorney's fees, costs, and such further relief the Court deems appropriate.

in furtherance of the conspiracy.

Respectfully submitted:

Chris Lucero, Jr.
P.O. Box 7429
Albuquerque, New Mexico 87194
(505) 843-6687

THE EXHIBITS ATTACHED TO THIS PLEADING ARE TO VOLUMINOUS TO SCAN. SAID EXHIBITS ARE ATTACHED TO THE ORIGINAL PLEADING IN THE CASE FILE WHICH IS LOCATED IN THE RECORDS DEPARTMENT U. S. DISTRICT COURT CLERK'S OFFICE.